

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BARBARA LODER HILDEBRANDT,)	
)	
Plaintiff,)	
)	
vs.)	Case No. C-1-02 0003
)	
HYATT CORPORATION, et al.)	Judge Sandra Beckwith
)	
Defendants.)	
)	

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
TABLE OF CONTENTS**

I.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
A.	Introduction.....	1
Ohio Revised Code (“O.R.C.”) Chapter 4112		
Age Discrimination in Employment Act, 29 U.S.C. §§ 621, <i>et seq.</i>		
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), <i>et seq.</i>		
B.	Plaintiff’s Employment With Hyatt.	3
C.	Hyatt’s National Sales Force.....	3
D.	Promotional Opportunities In The NSF.....	4
E.	Plaintiff’s Quota.....	10
F.	The Economic Downturn In 2001.....	10
G.	The 2001 Mid-Year Review.....	11
H.	Booth’s Alleged Gender And Age-Based Comments	13
I.	The Tragedy of September 11, 2002 And Its Effects On Hyatt’s Workforce	14
J.	The Reduction In Force In September 2001	15

K.	The Reassignment Of Plaintiff's Accounts	17
L.	Statistical Overview Of Hyatt's Workforce Before And After The Reduction In Force	18
M.	Summary Of Plaintiff's Claims.....	20
II.	LEGAL ANALYSIS AND ARGUMENT	21
A.	Summary Judgment Standard	21
	<i>Morris v. Oldham County Fiscal Court</i> , 201 F.3d 784 (6 th Cir. 2000)	
	<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	
	<i>Evans v. Jay Instrument and Specialty Co.</i> , 889 F. Supp 302 (S.D. Ohio 1995)	
	<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	
	<i>Hedberg v. Indiana Bell Telephone Co.</i> , 47 F.3d 928 (7 th Cir. 1995)	
	<i>Ruth v. Allis-Chalmers Corp.</i> , 1986 U.S. Dist. LEXIS 26531 (W.D. Ky. April 18, 1986)	
	<i>Harker v. Federal Land Bank of Louisville</i> , 679 S.W.2d 226 (Ky. 1984)	
	<i>Sublett v. Edgewood Universal Cabling Systems, Inc.</i> , 194 F. Supp. 2d 692 (S.D. Ohio 2001)	
B.	Plaintiff's Claims For Age And Gender Discrimination Against Hyatt Fail As A Matter Of Law.....	22
	<i>Irwin v. Marquette Medical Systems, Inc.</i> , 107 F. Supp 2d 974 (S.D. Ohio 2000)	
	<i>Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civil Rights Comm.</i> , 66 Ohio St. 2d 192, 421 N.E.2d 128 (1981)	
	<i>Genaro v. Central Transport, Inc.</i> , 84 Ohio St. 3d 293, 703 N.E.2d 782 (1999)	
1.	<u>Plaintiff Cannot Establish A <i>Prima Facie</i> Case Of Age Or Gender Discrimination Against Hyatt</u>	23
a.	<u>Applicable Burdens Of Proof For Age And Gender Discrimination.....</u>	23
	<i>Sublett v. Edgewood Universal Cabling Systems, Inc.</i> , 194 F. Supp. 2d 692 (S.D. Ohio 2001)	
	<i>Manzer v. Diamond Shamrock Chem. Co.</i> , 29 F. 3d 1078 (6 th Cir. 1994)	
	<i>Terbovitz v. Fiscal Court of Adair County</i> , 825 F.2d 111 (6 th Cir. 1997)	
	<i>Price Waterhouse v. Hopkins</i> , 490 U.S. 238 (1989)	
	<i>Kittle v. Cynocom Corp.</i> , 232 F. Supp. 2d 867 (S.D. Ohio 2002)	
	<i>Mausy v. Kelly Services, Inc.</i> , 75 Ohio St. 3d 578, 664 N.E. 2d 1272 (1996)	
	<i>Creech v. The Ohio Casualty Ins. Co.</i> , 944 F. Supp. 1347 (S.D. Ohio 1996)	
	<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	

Irwin v. Marquette Medical Systems, Inc., 107 F. Supp. 2d 974 (S.D. Ohio 2000)
Rob v. Lakeshore Estates, Inc., 241 F.3d 491 (6th Cir. 2001)
Barnhart v. Pickerel, Schaeffer & Ebeling Co., L.P.A., 12 F.3d 1382 (6th Cir. 1993)
Kline v. Tennessee Valley Auth., 128 F.3d 337 (6th Cir. 1997)

**b. Plaintiff Cannot Establish A Prima Facie Case
 Of Age Or Gender Discrimination Based On Hyatt's
 Alleged Failure To Promote Her To Certain Positions 25**

AMTRAK v. Morgan, 536 U.S. 101, 120 S. Ct. 2061 (2002)
Rob v. Lakeshore Estates, Inc., 241 F.3d 491 (6th Cir. 2001)
Pritchard v. Office Max, Inc., 2000 U.S. App. LEXIS 437 (6th Cir. January 6, 2000)
McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
Betkerur v. Aultman Hosp. Ass'n., 78 F.3d 1079 (6th Cir. 1996)
Brown v. Tennessee, 93 F.2d 00 (6th Cir. 1982)
Hines v. Ohio State University, 3 F. Supp. 2d 859 (S.D. Ohio 1998)
Dews v. A.B. Dick Co., 231 F.3d 1016 (6th Cir. 2000)
Donahoo v. Ohio Department of Youth Services, 2002 U.S. Dist. LEXIS 23613 (N.D. Ohio August 26, 2002)
Frazier v. Ford Motor Co., 176 F. Supp. 2d 719 (W.D. Ky. 2001)

1) THE ASSOCIATE DIRECTOR OF SALES POSITION 28

AMTRAK v. Morgan, 536 U.S. 101, 120 S. Ct. 2061 (2002)
Hedberg v. Indiana Bell Telephone Co., 47 F.3d 928 (7th Cir. 1995)
Ruth v. Allis-Chalmers Corp., 1986 U.S. Dist. LEXIS 26531 (W.D. Ky. April 18, 1986)

**2) THE ASSISTANT VICE PRESIDENT FOR
 INTERNATIONAL AND INDIVIDUAL
 TRAVEL POSITION 29**

AMTRAK v. Morgan, 536 U.S. 101, 120 S. Ct. 2061 (2002)
Brown v. Tennessee, 93 F.2d 600 (6th Cir. 1982)

**3) THE DIRECTOR OF SALES FOR THE CENTRAL
 NATIONAL SALES OFFICE POSITION 31**

Brown v. Tennessee, 93 F.2d 600 (6th Cir. 1982)
**c. Plaintiff Cannot Establish A Prima Facie Case
 Of Age Or Gender Discrimination Based On**

<i>The Elimination Of Her Position During Hyatt's Reduction in Force</i>	32
<i>Scott v. Goodyear Tire and Rubber Co.</i> , 160 F.3d 1121 (6 th Cir. 1998)	
<i>Irwin v. Marquette Medical Systems, Inc.</i> , 107 F. Supp 2d 974 (S.D. Ohio 2000)	
<i>Evans v. Jay Instrument and Specialty Co.</i> , 889 F. Supp 302 (S.D. Ohio 1995)	
<i>Barnes v. GenCorp, Inc.</i> , 896 F.2d 1457 (6 th Cir. 1990)	
<i>Herbst v. System One Information Management, L.L.C.</i> , 31 F. Supp. 2d 1025 (N.D. Ohio 1998)	
1) PLAINTIFF CAN PRESENT NO DIRECT EVIDENCE OF AGE OR GENDER DISCRIMINATION	33
<i>Terbovitz v. Fiscal Court of Adair County</i> , 825 F.2d 111 (6 th Cir. 1997)	
<i>Creech v. The Ohio Casualty Insurance Co.</i> , 944 F. Supp. 1347 (S.D. Ohio 1996)	
<i>Bush v. Dictaphone Corp.</i> , 161 F.3d 363 (6 th Cir. 1998)	
<i>Byrnes v. LCI Communication</i> , 77 Ohio St. 3d 125, 672 N.E.2d 145 (1996)	
2) PLAINTIFF CAN POINT TO NO CIRCUMSTANTIAL EVIDENCE DEMONSTRATING HER TERMINATION AS A RESULT OF THE REDUCTION IN FORCE WAS RELATED TO HER AGE OR GENDER.....	35
<i>Ercegovich v. Goodyear Tire & Rubber Co.</i> , 154 F.3d 344 (6 th Cir. 1998)	
<i>Mitchell v. Toledo Hosp.</i> , 964 F.2d 577 (6 th Cir. 1992)	
<i>Hooper v. Cargill, Inc.</i> , 1999 U.S. App. LEXIS 17969 (6 th Cir. July 23, 1999)	
<i>Trepka v. The Board of Education for the Cleveland City School Dist.</i> , 28 Fed. Appx. 455, 2002 U.S. App. LEXIS 1357 (6 th Cir. January 24, 2002)	
3) PLAINTIFF CAN POINT TO NO STATISTICAL EVIDENCE SUPPORTING HER CLAIMS.....	39
<i>Barnes v. GenCorp, Inc.</i> , 896 F.2d 1457 (6 th Cir. 1990)	
<i>Laugesen v. Anaconda Co.</i> , 510 F.2d 307 (6 th Cir. 1975)	
<i>Adams v. Florida Power Corp.</i> , 255 F.3d 1322 (11 th Cir. 2001)	
2. <u>Even If Plaintiff Establishes A <i>Prima Facie</i> Case For Age And/Or Gender Discrimination, She Cannot Establish That Hyatt's Legitimate, Nondiscriminatory Reasons For</u>	

<u>Her Discharge Or Allegedly Denied Promotions Were Pretext For Discrimination.....</u>	40
<i>Manzer v. Diamond Shamrock Chem. Co.</i> , 29 F. 3d 1078 (6 th Cir. 1994)	
<i>Rob v. Lakeshore Estates, Inc.</i> , 241 F.3d 491 (6 th Cir. 2001)	
<i>Herbst v. System One Information Management, L.L.C.</i> , 31 F. Supp. 2d 1025 (N.D. Ohio 1998)	
<i>Ruth v. Allis-Chalmers Corp.</i> , 1986 U.S. Dist. LEXIS 26531 (W.D. Ky. April 18, 1986)	
<i>Bush v. Dictaphone Corp.</i> , 161 F.3d 363 (6 th Cir. 1998)	
<i>Betkerur v. Aultman Hosp. Ass'n.</i> , 78 F.3d 1079 (6th Cir. 1996)	
a. <i>There Is No Evidence Of Pretext In the Context Of Plaintiff's Allegations That She Was Not Promoted To Certain Positions.....</i>	42
b. <i>There Is No Evidence Of Pretext In The Context Of The Elimination Of Plaintiff's Position</i>	44
<i>Frantz v. Beechmont Pet Hosp.</i> , 117 Ohio App. 3d 351, 690 N.E.2d 987 (1996)	
<i>Herbst v. System One Information Management, L.L.C.</i> , 31 F. Supp. 2d 1025 (N.D. Ohio 1998)	
C. Plaintiff's Claims Against The Individual Defendants For Age And Gender Discrimination Fail As A Matter Of Law.....	45
O.R.C. § 4112.01(A)(2)	
<i>Genaro v. Central Transport, Inc.</i> , 84 Ohio St. 3d 293, 703 N.E.2d 782 (1999)	
<i>Williams v. General Electric Co.</i> , 269 F. Supp. 2d 958, 970 (S.D. Ohio 2003)	
<i>Jones v. Kilbourne Medical Laboratories</i> , 162 F. Supp. 2d 813 (S.D. Ohio 2000)	
<i>Brown v. Worthington Steel, Inc.</i> , 211 F.R.D. 320 (S.D. Ohio 2002)	
D. Plaintiff's Claims Against Defendants For Discharge Based On A Violation Of Public Policy Should be Dismissed As A Matter Of Law.....	48
<i>Wiles v. Medina Auto Parts</i> , 96 Ohio St. 3d 241 (2002)	
O.R.C. § 4112.99	
<i>Rice v. CertainTeed Corp.</i> , 84 Ohio St. 3d 417, 704 N.E.2d 1217 (1999)	
<i>Barlowe v. AAAA Int'l Driving</i> , 2003 Ohio App. LEXIS 5097 (October 24, 2003)	
<i>Kittle v. Cynacom Corp.</i> , 232 F. Supp. 2d 867 (S.D. Ohio 2002)	
<i>Jones v. Kilbourne Med. Labs.</i> , 162 F. Supp. 2d 813 (S.D. Ohio 2000)	
III. CONCLUSION	50